

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 20, 2016

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TONY KIM WHITE,

Plaintiff,

vs.

JAMES KEY, LT. BUSS, SGT.
ORTH, CUS MICHAEL A.
RAINVILLE, SGT. BOLINGER, C/O
JON S. CHRISTNER, C/O
SAYWERS and BRENDA
DESHAZER,

Defendants.

NO: 4:16-CV-05010-SMJ

**ORDER DISMISSING
COMPLAINT**

1915(g)

Magistrate Judge Rodgers filed a Report and Recommendation on June 29, 2016, ECF No. 15, recommending Mr. White's Complaint be dismissed with prejudice for failure to state a claim upon which relief may be granted, and that such dismissal count as a "strike" under 28 U.S.C. § 1915(g). Plaintiff, who initiated this action while incarcerated at the Coyote Ridge Corrections Center, was subsequently released. He is proceeding *pro se* and *in forma pauperis*; Defendants have not been served.


1 Magistrate Judge Rodgers found that Plaintiff had failed to present facts
2 from which the inference could be made that he suffered an "actual injury" to his
3 access to the court. *See Lewis v. Casey*, 518 U.S. 343, 351-52 (1996).
4 Furthermore, claims of the negligent deprivation of property failed to state a claim
5 upon which relief may be granted. *Hudson v. Palmer*, 468 U.S. 517, 533 (1984);
6 *Parratt v. Taylor*, 451 U.S. 527, 544 (1981), overruled on other grounds by
7 *Daniels v. Williams*, 474 U.S. 327, 328 (1986) (holding negligent loss of property
8 is not actionable under the Due Process Clause).

9 There being no objections, the Court **ADOPTS** the Report and
10 Recommendation. The Complaint, ECF No. 12 is **DISMISSED WITH**
11 **PREJUDICE** under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

12 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
13 brings three or more civil actions or appeals which are dismissed as frivolous or for
14 failure to state a claim will be precluded from bringing any other civil action or
15 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
16 physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**
17 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's complaint**
18 **may count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and**
19 **may adversely affect his ability to file future claims.**
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1 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
2 Order, enter Judgment, forward copies to Plaintiff at his last known address, and
3 **CLOSE** the file. The District Court Executive is further directed to forward a
4 copy of this Order to the Office of the Attorney General of Washington, Criminal
5 Justice Division. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any
6 appeal of this Order would not be taken in good faith and would lack any arguable
7 basis in law or fact.

8 **DATED** this 20th day of July 2016.

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10 
11 SALVADOR MENDEZ, JR.
12 United States District Judge
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